

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION I

CACR08-558

January 14, 2009

APPEAL FROM THE FAULKNER  
CIRCUIT COURT  
[CR-2006-2612]

SCOTT BRANDON FORD  
APPELLANT  
V.

HONORABLE CHARLES E.  
CLAWSON, JR., JUDGE

STATE OF ARKANSAS  
APPELLEE

AFFIRMED; MOTION TO BE  
RELIEVED GRANTED

Scott Ford was convicted by a Faulkner County jury of two counts of sexual assault in the second degree. He was sentenced to ninety months' imprisonment on each count, with the sentences to be served concurrently, and fined \$2,500 for each conviction. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Arkansas Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit. Counsel's motion was accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to appellant made by the trial court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished appellant with a copy of

his counsel's brief and notified him of his right to file *pro se* points; appellant has not filed any points.

The only adverse rulings in this case were the denial of Ford's motions for directed verdict and the jury's return of a guilty verdict on two counts of sexual assault in the second degree. A motion for directed verdict is a challenge to the sufficiency of the evidence. *Simmons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004). To determine if evidence is sufficient, there must be substantial evidence, direct or circumstantial, to support the verdict. *Id.* Substantial evidence is that which is of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without speculation or conjecture. *Mayo v. State*, 70 Ark. App. 453, 20 S.W.3d 419 (2000). In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the conviction. *Simmons, supra*.

A person commits sexual assault in the second degree if he, being eighteen years of age or older, engages in sexual contact with another person who is less than fourteen years of age and not the person's spouse. Ark. Code Ann. § 5-14-125(a)(3) (Repl. 2006).

The victim was Ford's brother-in-law, and at the time these offenses occurred, the victim was under the age of fourteen. At trial, the victim provided detailed descriptions of the sexual encounters with Ford, which included oral sex and manual ejaculation. The victim was unable to identify Ford in the courtroom at trial because he did not have his glasses and could not see well. The victim testified that he did not know how old Ford was during the encounters, that he guessed he was in his twenties, and, to his knowledge, Ford was over

eighteen at those times. The victim's sister, Jessica Kirksey, identified Ford in the courtroom and testified that she was married to Ford during the time in question.

The only issues raised in Ford's motions for directed verdict involved proof of his age at the time of the incidents and the fact that the victim was unable to identify Ford in the courtroom. The victim testified that, to his knowledge, Ford was eighteen at the time of the sexual encounters; this testimony was not rebutted by Ford. It is true that the victim was not able to identify Ford in the courtroom on the day of trial; however, the identity of Ford was never really in question. Ford was the victim's brother-in-law and was well known to the victim. Furthermore, the victim's sister, who was Ford's ex-wife, identified Ford in court on the day of trial. "Although the identification of the defendant as the perpetrator of the crime is an element of every criminal case, there is no requirement that the identification must be provided by the victim." *Stewart v. State*, 88 Ark. App. 110, 113, 195 S.W.3d 385, 387 (2004).

From a review of the record and the brief presented to this court, we conclude that appellant's counsel has complied with the requirements of Rule 4-3(j) of the Arkansas Rules of the Supreme Court and the Court of Appeals. Appellant's convictions are affirmed, and counsel's motion to be relieved is granted.

Affirmed. Counsel's motion to be relieved is granted.

PITTMAN and GLADWIN, JJ., agree.